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In The

Supreme Court of The United States

October Term, 1996

ROBERT L. SCHULZ , MARCELLINE HASKELL, RALPH HASKELL, JOSEPH L. CONNORS, and LEONARD SCHLEICHER,

Petitioners,

THE NEW YORK STATE UNIFIED COURT SYSTEM, JUDITH KAYE CHIEF JUDGE; THE NEW YORK STATE LEGISLATURE, JOSEPH BRUNO MAJORITY LEADER OF THE SENATE, SHELDON SILVER SPEAKER OF THE ASSEMBLY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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97-87

QUESTION PRESENTED

Whether the State can suspend eight sections of the New York Constitution and rule, instead, by obnoxious statutes, and when challenged make and enforce a law that suspends the federal (and state) right of its citizens to petition for a redress of grievances.

PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear in the caption of the case.

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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT L. SCHULZ , MARCELLINE HASKELL, RALPH HASKELL, JOSEPH L. CONNORS, and LEONARD SCHLEICHER,

Petitioners,

THE NEW YORK STATE UNIFIED COURT SYSTEM, JUDITH KAYE CHIEF JUDGE; THE NEW YORK STATE LEGISLATURE, JOSEPH BRUNO MAJORITY LEADER OF THE SENATE, SHELDON SILVER SPEAKER OF THE ASSEMBLY,

Respondents.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Second Circuit (Appendix A, at page A-1) is unreported, entered January 30, 1997.

The Order of the United States Court of Appeals for the Second Circuit (Appendix B, at pages A-2 to A-7) is unreported, entered December 9, 1996.

The Decision and Order of the United States District Court for the Northern District of New York (Appendix C, at pages A-8 to A-12), is unreported, decided April 11, 1996.

JURISDICTION

The Order of the United States Court of Appeals for the Second Circuit was entered on January 30, 1997.

In accordance with Rule 13.4 of this Court, this petition is filed within 90 days of the date of the Order of the Court of Appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED[1]

1. The First Amendment to the United States Constitution reads, in relevant part: ***"Congress shall make no law...abridging...the right of the people...to petition the Government for a redress of grievances."***

2. The Fourteenth Amendment (Clause 2) to the United States Constitution provides, in relevant part: ***"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...."***

3. An implicit constitutional (structural) safeguard is "separated powers" among the legislative, executive and judicial branches.

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[1] These are the constitutional and statutory provisions directly involved. There are seven sections of the New York Constitution that are indirectly involved; they are among those debt-controlling provisions of the NY Constitution that the challenged statute eviscerates. They are presented in Appendix D hereto.

4. Article IV, Section 4 of the United States Constitution reads in relevant part: ***"The United States shall guarantee to every citizen in this Union a republican form of government."***

5. New York State Finance Law Section 123-b(1) reads: ***"notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property, except that the provisions of this subdivision shall not apply to the authorization, sale, execution, or delivery of a bond issue or notes issued in anticipation thereof by the state or any agency, instrumentality or subdivision thereof or by any public corporation or public benefit corporation."*** (Petitioners' emphasis)

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Public debt and reckless fiscal behavior by State and local governments in New York did, in fact, cause the deep and widespread fiscal collapses of 1837 and 1867, resulting in great public indignation and the public demand for and approval, beginning in 1846, of various debt-limiting and fiscal control provisions of the N.Y. Constitution, now set forth in Article VII (State Finances), Article VIII (Local Finances) and Article X (Corporations).

However, in 1975, the Legislature and the Executive adopted a law [State Finance Law Section 123-b(1)] which, in its plain language and effect, denies citizen-taxpayers the right to defend those debt-limiting provisions of the Constitution by specifying that citizens shall not be allowed to maintain a lawsuit if the subject matter deals with public debt -- i.e., the "authorization, sale, execution or delivery of a bond issue or notes issued in anticipation thereof by the State or any agency, instrumentality or subdivision thereof, or by any public corporation or public benefit corporation."

The Judicial branch has been honoring SFL 123-b(1) in its decisions.[2] By doing so, it has allowed the Executive and the Legislative branches to change the people's Constitution. The Unified Court System of New York, citing SFL 123-b(1) and Wein v Comptroller, 46 NY2d 394 (1979), has now been routinely dismissing all constitutional challenges to public debt issuances by State and local agencies.[3]

The Judiciary has, in fact, and without exception, refused to address the issue of the constitutionality of SFL 123-b(1) when repeatedly requested to do so in formal proceedings. Petitioners have asked the Unified Court System to strike

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[2] In 1979, in a decision written by Judge Sol Wachtler, the Court of Appeals issued its decision in Wein v Comptroller, 46 NY2d 394, ruling that SFL 123-b(1) "does indicate a reasonably clear ***legislative*** intent to prevent taxpayer challenges with respect to a State bond issue or notes issued in anticipation thereof [SFL 123-b(1)]. Under the circumstances it would be inappropriate for the courts to confer standing in these cases since such a determination would, in effect, render the statutory 'exception' a nullity and ignore the expressed ***legislative*** policy to the contrary." (Petitioners' emphasis).

[3] See, for instance, NYS Coalition for Criminal Justice v Coughlin (1984), 64 NY2d 660; Schulz v State of NY (1992), 185 Ad2d 596, affirmed on other grounds, 81 NY2d 336 (1993); Schulz v State of New York and City of Troy (NYS S.Ct., Albany Cty. Index 4505-95, dismissed Dec. 21, 1995).

down SFL 123-b(1) as a violation of the people's fundamental, constitutional right to petition the government for a redress of grievances, particularly with respect to constitutional violations. The Unified Court System of New York has, thereby, been denying persons the exercise of their constitutional rights. Rather than "separate powers" the Unified Court System of New York has, in effect, been cooperating with the Legislative and Executive branches in unlawfully suspending and altering the people's Constitution.

The Executive and the Legislative, secure in their belief that they could continue to operate behind the shield of SFL 123-b(1), with the help of the Judiciary, have been incurring public debt at an alarming rate, even to pay operating costs of government agencies, to fund operating deficits of government agencies, and to balance the budgets of government agencies, all without voter approval and in violation of other important debt-limiting provisions of the NY Constitution.

To accomplish their borrowing objectives, the Executive and the Legislative branches often create public corporations to issue the bonds, but routinely use public taxpayer funds to pay obligations of those public corporations without voter approval. This practice has become known as "back-door borrowing."

In violation of the plain language of debt-limiting provisions of the Constitution, the Legislative and the Executive branches have been authorizing scores of cities, towns, counties and school districts to issue long-term debt to fund operating costs, operating deficits and to otherwise balance their budgets.

Reliance on borrowed money to fund operating costs and operating deficits, including the repair and maintenance of

existing facilities, has now become a common practice for the Executive and Legislative branches.

Such practices have caused New York State to lose its early 1960's position as a strong creditor State to become a weak debtor State with the lowest credit rating of all States.

The Rockefeller administration started the decline principally through its creation of and the use of tax-supported debt issued by the Urban Development Corporation; the Carey administration contributed to the decline principally through its creation of and the use of tax-supported debt issued by the Municipal Assistance Corporation of New York City; and the Cuomo administration contributed to the decline principally through the creation of and the use of tax-supported debt by the Local Government Assistance Corporation as well as by the Thruway Authority, the Urban Development Corporation and the Metropolitan Transportation Authority.

Unconstitutionally incurred public debt is largely responsible for the fact that the people of New York State are the most heavily taxed people in the nation and the taxes have become overburdensome and oppressive.

The Legislature and the Executive are in the process of using one of the newest public corporations (the Long Island Power Authority) to issue up to $10 billion in long-term debt, which action would fund a takeover of the Long Island Lighting Company (a private corporation), including paying off all the private investors in LILCO and paying off billions of dollars of debt owed by LILCO, which action only exacerbates the tax and credit burden of the entire State. Such an act is repugnant to four provisions of the New York Constitution. However, SFL 123-b(1), in violation of Petitioners' fundamental federal right to petition the government for a redress of grievances, "closes the door" to a review by the

Unified Court System of any complaint by any citizen seeking to assert those constitutional rights.

Earlier this year the Legislature and the Executive adopted Chapter 16 of the Laws of 1997, creating the "New York City Transitional Authority" for the purpose of issuing $7.5 billion in public debt, because the City of New York has reached its constitutional debt limit. The act became effective on March 5, 1997. Under "Legislative findings and declaration," Chapter 16 of the Laws of 1997 reads, "It is further found and declared that authorization for this transitional finance authority to issue debt shall be temporary;...that a constitutional amendment should be proposed to update the calculation of the City's debt limit...and that the power of the authority to issue bonds (other than refunding bonds) shall expire upon the enactment of such constitutional amendment." In other words, the Legislature and the Executive have decided to increase the level of public debt above the constitutional debt limit, and to continue doing so until the Constitution enables them to increase the debt above the current constitutional debt limit. Such an act is repugnant to more than one provision of the New York Constitution. However, SFL 123-b(1), in violation of Petitioners' fundamental right to petition the government for a redress of grievances, "closes the door" to a review by the Unified Court System of any complaint by any citizen seeking to assert those constitutional rights.

By their actions the Legislature and Executive are saying that it does not matter what prohibitions or restrictions the NY Constitution places on the Legislature and the Governor when it comes to authorizing the incurrence of public debt because the Legislature and the Executive, through the adoption, in 1975, of the exception language in State Finance Law 123-b(1), have removed the ability of all citizen-taxpayers to

effectively assert those constitutional rights in the Judicial branch.

Respondents' behavior demonstrates that the Legislature and the Executive have, in fact, changed the Constitution by merely adopting a law. This conclusion forces yet another conclusion: that the government of New York State has, thereby, seized the ultimate power from the people and is saying to the people that while there is a "government republican in form" (it has three branches and a Constitution), it lacks substance, and the people and their Constitution do not have to be honored or respected by those wielding governmental power in New York State.

This, of course, is palpable nonsense and smacks of treason under our system of governance and petitioners ask this Court to declare the exception language in SFL 123-b(1) to be unconstitutional, null and void.

SFL 123-b(1) represents, in effect, the equivalent of a series of amendments to the constitution's of the United States and of the State of New York. The problem, of course, is that these amendments were not approved by the United States Congress nor by two-thirds of the State legislatures nor, in the case of the amendments to the New York Constitution, by the voters of New York State.

With respect to the United States Constitution, the exception language of SFL 123-b(1) strips Petitioners:

- of their First Amendment right to petition the government for a redress of grievances after the State has acted in a way that is repugnant to certain provisions of the U.S. and N.Y. Constitutions;
- of their guarantee of a republican form of government, as provided by Article IV, Section 4, if they are residing in New York State; of their Fourteenth Amendment right

against state laws that abridge these privileges and immunities; and

- of their Fifth Amendment right against a taking of their money property through taxes and fees without "constitutional due process".

With respect to the New York State Constitution, the exception language of SFL 123-b(1) strips Petitioners:

- of their fundamental right, as provided by Article I Section 9.1, to petition the government for a redress of grievances when the State acts in a way that is repugnant to certain provisions of the U.S. and New York Constitutions;
- of their constitutional protection against debt incurred by the State to fund operating costs as provided by Article VII, Section 12;
- of their constitutional protection against debt incurred by local governments to fund operating deficits, as provided by Article VIII, Section 2;
- of their constitutional protection against the use of State credit in aid of bond-issuing public corporations and Authorities, as provided by Article VII, Section 8;
- of their constitutional protection against the use of the credit of local governments in aid of bond-issuing public corporations, as provided by Article VIII, Section 1;
- of their constitutional protection against the use of State or local government tax revenues to fund any part of any debt obligations of bond-issuing public corporations or Authorities, as provided by Article X, Section 5;
- of their constitutional guarantee of municipal debt limitations as provided by Article VIII, Section 4; and
- of their constitutional protection against the use of public funds borrowed to subsidize private corporations as provided by Article VII, Section 8.

B. STAGE IN PROCEEDINGS WHERE FEDERAL QUESTIONS WERE RAISED

Petitioners' first and only claim in the court of original instance (US District Court for the Northern District of New York) was presented under the heading, "The Exception In SFL 123-b(1) Is Unconstitutional." Petitioners' complaint went on to challenge the constitutionality of SFL 123-b(1) under the First and Fourteenth Amendments to the US Constitution and under Article IV, Section 4 of the US Constitution, as well as under the NY Constitution (Article I, Section 9.1; Article VII; Article VIII and Article X).

REASONS FOR GRANTING THE WRIT

A. THE LOWER COURTS ERRED: THIS CASE FALLS WITHIN THE EXCEPTION TO THE GENERAL SOVEREIGN IMMUNITY RULE

Petitioners were apparently able to convince the Court of Appeals that the District Court erred in dismissing the case on the grounds of judicial immunity.[4] However, the Court ruled that petitioners' "claims against the New York Courts and the New York State Legislature were properly dismissed on the ground of immunity...Pennhurst State School & Hospital v Halderman, 486 [sic] U.S. 89,99 (1983)."

However, this case falls within the exception to the sovereign immunity rule. It is true, the sovereign immunity principle is a constitutional limitation on the federal judicial power established in Article III of the Constitution. Generally, the Eleventh Amendment bars a suit against State agencies and officials when the State is the real, substantial

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[4] Judicial immunity does not immunize the Unified Court System from declaratory and injunctive relief as distinguished from a personal liability/damages award.

party in interest, regardless of whether the suit seeks damages or injunctive relief.

However, in Ex parte Young, 209 US 123, the U.S. Supreme Court reconciled competing interests when it vindicated the supreme authority of federal law while at the same time preserving to an important degree the States' constitutional immunity. In Young, the Court recognized an important exception to the general rule that states have constitutional immunity from federal judicial power: ***a suit challenging the federal constitutionality of a state officials' action is not one against the state and, therefore, is not barred by the Eleventh Amendment.***

The instant case falls within the exception recognized in Young: petitioners' suit challenges the federal constitutionality of the action of the New York State Unified Court System, and Judith Kaye, Chief Judge, in enforcing the (federal) constitutionally repugnant language of State Finance Law Section 123-b(1); petitioners' suit also challenges the federal constitutionality of the action of the New York State Legislature for making that constitutionally repugnant provision of SFL 123-b(1). The exception in SFL 123-b(1) is a "door-closing" state statute that is repugnant to the United States Constitution.

Unlike petitioners in Pennhurst, petitioners in the instant case are not asking the federal court to order State officials to conform their conduct to state law. Rather, petitioners are asking the federal court to order State officials to conform their conduct to the supreme federal law -- the basis of Young.

An enactment which is violative of the federal constitution is "void", and, therefore, does not impart to any State agency or

official any immunity from responsibility to the supreme authority of the United States. Young at 160.

B. THE LOWER COURT ERRED: THIS IS NOT A "SPEECH AND DEBATE CLAUSE" CASE

The lower Court erred in ruling that petitioners' claims against the New York State Legislature and its leadership (Senate Majority Leader Bruno and Assembly Speaker Silver) were properly dismissed because "Legislators generally enjoy absolute immunity from Section 1983 liability for official conduct 'within the sphere of legitimate legislative authority.' Tenny v Brandhove, 341 U.S. 367, 376 (1951)."

To begin, petitioners direct this Court's attention to the fact that petitioners seek, primarily, to enjoin the New York State Unified Court System from enforcing the constitutionally repugnant exception in SFL 123-b(1). If the Court granted petitioners this relief it would, then, not be absolutely necessary to grant petitioners' other request -- a specific declaration (against the Legislature) that the exception in SFL 123-b(1) is unconstitutional. Petitioners made the New York State Legislature a party defendant to give it an opportunity to defend its actions, and because of the language of Section 1, Clause 2 of the Fourteenth Amendment, to wit, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The New York State Legislature did, in fact, "make" the constitutionally repugnant law. Petitioners' lawsuit is directed at both those who made and those who are enforcing a law that does, in fact, abridge the privileges and immunities petitioners enjoy as citizens of the United States. Finally, since the Legislature has no sueable "personhood", members in responsible leadership roles must be named. It is important that the individuals named be able to initiate a remedy -- the Majority Leader and the Speaker.

The lower Court affirmed on the basis of Tenny. However, Tenny was an intra- legislative, "Speech and Debate" case. In Tenny the issue was whether a State Legislature Committee's inquiry may fairly be deemed within its province, no matter what the motives of the individual legislators. The Tenny Court held that, "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions...The present case does not present such a situation...we conclude only that here the individual defendants of the legislative committee were acting in a field where legislators traditionally have power to act...." Tenny at 378, 379.

In Tenny, the Court made clear that while ***legislators*** are immune from liability for what they do or say in legislative proceedings, a ***legislature*** may not acquire a power by an unwarranted extension of the privilege and immunity from liability for acts done within the sphere of ***legislative*** activity. In other words, Tenny does not bar a legislator's right to complete freedom in "Speech and Debate"; however, it does cast a shadow upon the enactment of legislation that is outside of the purview of the legislature, such as an enactment repugnant to any constitutional provision. The instant case involves a constitutional challenge to an enactment of the New York State Legislature. The enactment of laws that are repugnant to the federal Constitution, as with SFL 123-b(1), does not fall within the "sphere of legitimate legislative activity."

By its ruling, the lower Court has, in effect, extended the privilege of legislators to be free from all civil process ("claims for declaratory or equitable relief, as well as for monetary damages") for what they do or say in legislative proceedings to what the entire body of legislators does in

enacting laws, even if by that enactment they acquire a power(s) that is not legitimately theirs.

With all due respect, the lower Court has apparently misconstrued the facts and the law of the instant case. A State ***legislature*** is not immune from claims for declaratory relief if and when it acts to acquire power and to oppress.

Mr. Justice Black, concurring in Tenny, wrote that while "legislators are immune from legal responsibility for intra-legislative statements and activities," the California Legislature is not immune to civil process and can be sued "on the ground that the resolution creating the committee or the committee's actions under it were unconstitutional, null and void." Tenny at 380. Mr. Justice Black, concurring, (Tenny at 381), wrote, "Unfortunately, it is true that legislative assemblies, born to defend the liberty of the people, have at times violated their sacred trusts and become the instruments of oppression."

The lower Court appears to have misconstrued Supreme Court of Va. v Consumers Union, 446 US 719 (1980). In Consumers Union the United States Supreme Court did, in fact, say, "Although Tenny involved an action for damages under Section 1983, its holding is equally applicable to Section 1983 actions seeking ***declaratory*** or injunctive relief." (Petitioners' emphasis). However, the Supreme Court was merely stating that the Speech and Debate Clause protects legislators from all civil process (even declaratory judgment actions) for what they do or say in ***legislative proceedings***. This doesn't mean, however, that State ***legislatures*** are immune from civil process for declaratory relief when they enact laws, such as SFL 123-b(1), by which they acquire power and oppress.

The Legislature is not immune from the instant challenge -- a challenge which seeks a declaration that the exception in SFL 123-b(1) is unconstitutional, null and void. This is a proceeding against a finished law (a final product), not against legislators involved in the legislative process. Through SFL 123-b(1) the legislature has acquired the power to limit the citizen-taxpayers' natural right to petition the government, to access the courts and to prohibit/restrict the power of the State and its municipalities to incur public debt.

C. THE LOWER COURT ERRED: PETITIONERS HAVE STANDING

Petitioners believe it is important to note that standing to maintain constitutional challenges involving economic harm appears to be based as much on court policy as on a constitutional foundation. Flast v Cohen, 392 US 83, 93. "Justiceability is...not a legal concept with fixed content or susceptible of scientific verification. Its utilization is the resultant of many subtle pressures...." Flast at 95, quoting from Poe v Ullman, 367 US 497, 508 (1961). The doctrine of justiceability "has become a blend of constitutional requirements and policy considerations." Flast at 97 quoting from Barrows v Jackson, 346 US 249, 255. "There is no absolute bar to judicial review by taxpayers challenging allegedly unconstitutional taxing and spending programs." Flast at 101.

In Lujan v Defenders of Wildlife, 504 US 555, 119 L Ed 2d 351, 364-365 (1992), the Court summarized the general rule for standing in federal court, in taxpayer actions or otherwise: 1) these plaintiffs; 2) must show injury in fact; 3) that is concrete and particularized; 4) and actual or imminent, not conjectural; 5) caused by an invasion; 6) of legally protected interests. Pro-se petitioners do, in fact, meet these criteria.

Before petitioners address their standing in the terms set down in Lujan, petitioners argue that because this case involves the constitutionality of a "door closing" statute, it should receive policy considerations similar to those given by the Seventh Circuit in another case involving a door closing statute: Czerkies v Department of Labor, 73 F 3d 1435, 1441-42 (1996). Czerkies appears to stand for the proposition that plaintiffs (like those in the instant case) asserting actual or imminent and particular economic harm, may challenge entire statutory schemes for unconstitutionality. "It is distasteful to suppose that an administrative agency would claim to receive from Congress by sheer inadvertence a license to ignore the Constitution...Our decision in Marozsan [852 F.2d 1469 (7th Cir. 1988)(en banc)] emphasized the presumption against denying all judicial remedies for violations of the Constitution by federal agencies, noting the anomalous consequences of such a denial...The anomalies would be even greater here because Marozsan at least had an administrative appellate remedy...Czerkies has no appellate remedies of any kind. Consequences are not irrelevant to the interpretation of statutes...Confining constitutional challenges to systems or general rules or practices of the agencies would lighten the judicial workload -- but not enough to outweigh the interest in allowing persons ***some*** forum in which to assert their constitutional rights." Czerkies, 1441-1442.

Ruling on such a door closing statute (that is, one purportedly precluding judicial review of an administrative decision, in Czerkies, regarding workman's compensation claims), the Seventh Circuit decided firmly that unless Congress explicitly precludes judicial review of constitutional claims (and such a preclusion would certainly bear a heavy burden of judicial scrutiny), statutes may not preclude such review of such claims.

Here, we are faced with the most distasteful situation where the entire judicial department of the State of New York is claiming to have received from the Legislature a license to ignore the Constitution and to disallow persons ***some*** forum -- any forum -- in which to assert their constitutional rights regarding the incurrence of public debt.

While this is more of a "right to petition," "privileges and immunities" and "guarantee clause" case than a taxpayer action, petitioners' action is, nonetheless, a "good faith pocketbook action" in which petitioners allege a "direct and particular [economic] interest," quoting Doremus v Bd. Of Educ. Of Hawthorne, 342 US 429, 434-35 (1952).

In Flast v Cohen, 392 US 83 (1968), the Court held that since the plaintiffs' constitutional (First Amendment Establishment Clause) challenge was made with respect to a program involving a ***substantial expenditure of tax funds***, and since the establishment clause operated as a specific constitutional limitation upon the exercise by Congress of its taxing and spending powers, the plaintiffs had standing to invoke a federal court's jurisdiction for an adjudication on the merits.

In the instant case, petitioners' constitutional challenge was made with respect to a State statute which instructs the Judiciary to dismiss any case involving "the authorization, sale execution or delivery of a bond issue or notes issued in anticipation thereof by the State or any agency, instrumentality or subdivision thereof or by any public corporation or public benefit corporation." SFL 123-b(1). This statute, being enforced by the Judiciary, has led to a very substantial incurrence of public debt (actual as well as threatened and potentially protracted). The challenge goes indirectly to the substantial expenditure of tax funds to service or guarantee that debt. The federal rights upon which this case is based (Separation of Powers, First and Fourteenth

Amendment right to petition, Fifth Amendment right against taking of money property through taxes and fees without constitutional due process, and Article IV's guarantee of state powers based upon the consent of the governed) guarantee a State government harnessed to the constitutional will of the governed and operate as specific constitutional limitations upon the exercise by the New York Legislature of its debt-incurring, taxing and spending powers. Therefore, citizen-taxpayer-petitioners have standing to invoke the federal court's jurisdiction for an adjudication on the merits because of the federal questions involved. They have successfully met the two-pronged nexus test established by Flast.

Petitioners' ***actual*** injury as a result of SFL 123-b(1) is concrete, measurable and substantial. As the Record demonstrates, since 1978 the Unified Court System has dismissed, for lack of standing to sue under SFL 123-b(1), constitutional challenges to legislative and executive enactments of laws authorizing the incurrence of public debt in the form of principal and interest in an amount greater than $40 billion dollars.

Petitioners' ***threatened*** injury as a result of SFL 123-b(1) is concrete, measurable and substantial: the State has created the Long Island Power Authority (LIPA) and is threatening to enact a law authorizing LIPA to incur tax-supported State debt in the form of principal and interest in an amount of about $18 billion dollars to take over the Long Island Lighting Co., in violation of debt-limiting restrictions of the New York Constitution; the State has just enacted a law establishing the New York City Transitional Finance Authority to incur tax-supported debt in the form of principal and interest in an amount of $15 billion, in violation of specific debt-limiting provisions of the NY Constitution; the State is threatening to enact a law authorizing the incurrence of tax-supported debt in the form of principal and interest in an amount of about $2

billion to relocate Yankee Stadium and to renovate sixteen other sports facilities on behalf of private, professional sports organizations, in violation of debt-limiting restrictions of the New York Constitution; the State is threatening to incur billions of dollars in tax-supported debt to prevent the State Dormitory Authority from defaulting on its debt.

The actual and threatened concrete injury is approaching $100 billion, and the list goes on because the State knows that its position is impregnable: it can safely incur public debt through any of a number of processes without constitutional challenge. The door is, indeed, closed. The per-capita taxpayer injury is clearly substantial without any relief in sight.

Unless the Court permanently enjoins the further enforcement of the exception under SFL 123-b(1), the State (now obviously out of control) will mortgage substantially more of petitioners' tax dollars.

It is widely known that the citizen-taxpayers of New York State are the most heavily taxed (combined state and local taxes and fees) people in the nation. This is significantly the result of State and local borrowing practices since the adoption of SFL 123-b(1) in 1975.

It is widely known that since 1975, New York State's credit rating has dropped to lowest of all the states according to one of the two major credit-rating agencies (the other rates New York as next to last). It is widely known that since 1975, New York's (unconstitutional) "back-door borrowing" -- defended by SFL 123-b(1) -- has resulted in the highest per capita debt-burden in the nation. It is widely known that the State's tax-supported General Fund Budget is approximately $32 billion and that about $3 billion of that is needed just to service current State debt (to say nothing about local debt, which, in the past, the State has stood behind). It is widely

known that many cities and counties have begun to borrow to fund operating costs and operating deficits.

The Legislature and the Executive are supposed to be harnessed to the State constitutional will of the governed who (because of the concrete economic hardships suffered by the people in the 1800's as a result of State and local borrowing practices) have added specific, public-debt limiting restrictions to the State Constitution.

By the exception to SFL 123-b(1) the Legislature is acquiring power by, in effect, changing the State Constitution to eviscerate all of its debt-limiting restrictions. It thinks it has closed the door against significant judicial review since a lack of standing precludes a court from reaching the merits, whether the merits involve constitutional questions or not.

In the instant case, the burden of public debt is the logical nexus between the taxpayers status asserted by petitioners and the claims sought to be adjudicated.

Petitioners' injury is concrete and substantial.

Petitioner' injury as taxpayers is caused most directly by the substantial incurrence of State and local debt, the resultant low credit rating and the higher interest rate that must be paid for money the government is forced to borrow. Petitioners injury as taxpayers is caused, indirectly, by an oppressive burden of taxes and fees as the State and its municipalities raise the money needed to pay debt-service and for everything else they need or want to do.

The State's power to tax and spend is not directly the issue. Petitioners' challenge goes directly to the States authority to make and enforce the "door-closing" statute in question and, indirectly, to the power of the State and its municipalities to

incur public debt in ways that are repugnant to the debt-limiting restrictions of Articles VII, VIII and X of the New York Constitution.

D. SFL 123-b (1) IS AN UNCONSTITUTIONAL "DOOR CLOSING" STATUTE

Petitioners seek to nullify the exception language in New York State Finance Law 123-b(1), because it is a "door closing" statute -- a statute designed to close the door to constitutional protection and due process. By its enforcement, petitioners have been prevented from petitioning State and local governments if the matter involves the issuance of public debt, even though the challenged action is clearly repugnant to the plain language of the public-debt-limiting restrictions of the New York Constitution.

SFL 123-b(1) renders meaningless eight debt-limiting provisions of the New York Constitution. It is a dangerous statute -- in the extreme. ***If petitioners cannot obtain judicial review of obvious violations of the State Constitution by the Legislative and Executive branches, what is the purpose of judicial review at all? What is the purpose of the Constitution?***

Obviously, the exception in SFL 123-b(1) is designed to bar petitioners from challenging the state's unconstitutional borrowing practices, principally those that violate the people's fundamental debt-limiting protections as found under articles VII, VIII and X of the New York Constitution.

The exception in SFL 123-b(1) is designed to bar petitioners from exercising their fundamental right to petition the government for a redress of their grievances by accessing the courts.

The petition clause of the First Amendment is of paramount importance. It was inspired by the same ideals of liberty and democracy that resulted in the First Amendment freedoms to speak, publish and assemble. McDonald v Smith, N.C. 1985, 105 S. Ct. 2787. Right of access to courts is but one aspect of right to petition. California Motor Transport Co. v. Trucking Unlimited Cal. 1972, 92 S. Ct. 609. SFL 123-b(1) abridges that right.

The filing of a lawsuit carries significant constitutional protection, implicating the First Amendment right to petition the government for redress of grievances and the right of access to the courts. Hoeber for and on Behalf of N.L.R.B. v Local 30, United States, Tile & Composition Roofers et al (Pa) 1991, 939 F.2d 118. SFL 123-b(1) abridges these rights and is unconstitutional. The First Amendment protects the right to petition of persons whose activities are genuinely aimed at procuring favorable governmental action, as is the case here. LeBlanc-Sternber v Fletcher, S.D.N.Y. 1991, 781 F.Supp.261. The right to petition government for a redress of grievances is a specific, natural right guaranteed by the First Amendment, Boling v National Zinc Co., D.C. Okl. 1976 435 F. Supp, 18. See also U.S. v State of Mich., D.C. Mich. 1978, 460 F. Supp. 637 The right of petition guaranteed by the First Amendment has been extended so as to prevent its denial by the States. Richards Furniture Corp. v Bd. of County Com'rs of Anne Arundel County. (1963) 196 A.2d 621, 223 Md. 249. SFL 123-b(1) denies petitioners their right to petition.

Due process right to access to the courts and the right to petition officials and courts for redress of grievances are fundamental rights which cannot be invaded without justification by a compelling state interest. Morales v Turman, D.C. Tex, 1971, 326 F. Supp. 677. Respondents

have offered no justification much less a compelling justification for the exception in SFL 123-b(1).

The purpose of the Fourteenth Amendment, Section 1, Clause 2 is to preserve and enforce, as against state action, those rights, privileges and immunities secured by the constitution. Golden v Biscayne Bay Yacht Club, C.A. Fla. 1976, 530 F.2d 16, certiorari denied 97 S. Ct. 186. The First Amendment right to petition the government for a redress of grievances has been incorporated into the Fourteenth Amendment and is therefore applicable to the States. Nicholson v Moran, D.R.I 1993, 835 F. Supp. 692. The adoption of section 1, clause 2 of the Fourteenth Amendment implied that there are matters of fundamental justice that the citizens consider so essentially an ingredient of human rights as to require restraint on action on behalf of any state that appears to ignore them. Orleans Parish School Bd. v Bush, C.A. La. 1957, 242 F.2d 156, Certiorari denied 77 S.Ct. 1380. Section 1, Clause 2 of the Fourteenth Amendment is designed to protect petitioners from invasion of their rights, privileges and immunities by the federal ***and state*** governments respectively. Schatte v Int'l Alliance of Theatrical Stage Emp. et. al., D.C. Cal 1947 70 F. Supp. 1008, affirmed 165 F.2d 216 Certiorari denied 68 S.Ct. 1018.

In the constitution and laws of the United States the word "citizen" is generally, if not always used in a political sense to designate one who has the rights and privileges of a citizen of the State or of the United States and it is so used in Section 1, Clause 2 of the Fourteenth Amendment. Baldwin v Franks, Cal 1887, 7 S.Ct. 656. Petitioners are citizens of the United States and of New York State.

The right to sue and defend in the courts is the alternative of force, and it is one of the highest and most essential privileges of citizenship. Chambers v Baltimore etc. R. Co. Ohio 1907,

28 S. Ct. 34. SFL 123-b(1) strips petitioners of that privilege and is, therefore, unconstitutional.

Section 1, Clause 2 of the Fourteenth Amendment furnishes an additional guarantee against any encroachment by the state upon fundamental rights which belong to every citizen as a member of society. U.S. v. Cruikshank, La. 1876, 92 U.S. 554. SFL 123-b(1) is such an encroachment.

The Fourteenth amendment's provision that no state shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or [money] property without due [constitutional] process of law are limitations on the power of the States. Peoples Cab Co. v Bloom, D.C. PA 1971, 330 F. Supp. 1235, affirmed 472 F.2d 163. Respondents acted outside of their power in making and enforcing SFL 123-b(1).

Amendments 1 to 8 to the U.S. Constitution were intended as restrictions upon the federal government, but Section 1, Clause 2 of the Fourteenth Amendment constitutes a limitation upon the States. Beauregard v Wingard, D.C. Cal. 1964, 230 F. Supp. 167.

The right to petition the government for a redress of grievances and the other rights enumerated in Amendments 1 to 8 are the privileges and immunities of citizens of the United States; they are secured by the Constitution. U.S. v Hall, C.C. Ala. 1871, 3 Chicago Leg.N.260, 26 Fed.Cas. No.15, 282. SFL 123-b(1) is unconstitutional.

Protection of life, liberty, and property rests primarily with the states, and Section 1, Clause 2 of the Fourteenth Amendment furnishes an additional guaranty against any encroachment by the States upon those fundamental rights which belong to citizenship, and which the State Governments were created to

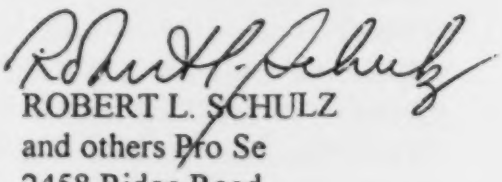
secure. The privileges and immunities of the citizens of the United States are indeed protected by it. In re Kemmler, ____ N.Y. 1890, 10 S.Ct. 930. SFL 123-b(1) is abrogated.

CONCLUSION

For these reasons a Writ of Certiorari should be issued to review the opinion and order of the United States Court of Appeals for the Second Circuit.

DATED: April 28, 1997

Respectfully submitted,



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Appendix A

Order of the United States Court of Appeals for the Second Circuit, January 30, 1997

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 30th day of January one thousand nine hundred and ninety-seven.

Schulz

Appellant,

v Dkt. No.: 96-7625

New York State Unified Court

Appellee.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by the appellants Robert L. Schulz, Marcelline Haskell, Ralph Haskell, Joseph L. Connors and Leonard Schleicher.

> Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote betaken thereon.

FOR THE COURT
GEORGE LANGE III, Clerk
By: Arthur M. Heller
Administrative Attorney

Appendix B

Order of the United States Court of Appeals for the Second Circuit, December 9, 1996

SUMMARY ORDER

THIS SUMMARY ORDER WILLL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of December, one thousand nine hundred and ninety-six.

PRESENT: HON. ELLSWORTH A. VAN GRAAFEILAND,
HON. DENNIS JACOBS,
HON. GUIDO CALABRESI,
Circuit Judges.

ROBERT L. SCHULZ, MARCELLINE HASKELL, RALPH HASKELL, JOSEPH L. CONNORS, and LEONARD SCHLEICHER,

Plaintiffs-Appellants,

-v.- 96-7625

THE NEW YORK STATE UNIFIED COURT SYSTEM; JUDITH KAYE, Chief Judge; THE NEW YORK STATE LEGISLATURE; JOSEPH BRUNO,

Majority Leader of the Senate; SHELDON SILVER, Speaker of the Assembly,

Defendants-Appellees.

APPEARING FOR PLAINTIFFS-APPELLANTS:	Robert L. Schulz, pro se, Queensbury, NY; Marcelline Haskell, pro se, Troy, NY; Ralph Haskell, pro se, Troy, NY; Joseph L. Connors, pro se, Troy, NY; Leonard Schleicher, pro se, Troy, NY.
APPEARING FOR DEFENDANTS- APPELLEES:	Frank K. Walsh, Assistant Attorney General (Dennis C. Vacco, Attorney General) Albany, NY.

Appeal from the United States District Court for the Northern District of New York (Scullin, J.).

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued pro se.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be and it hereby is **AFFIRMED.**

Robert L. Schulz, Marcelline Haskell, Ralph Haskell, Joseph Connors, and Leonard Schleicher, all members of the "All-County Taxpayers Association" (the "Association") appeal from an order of the United States District Court for the Northern District of New York (Scullin, J.), dismissing

their civil rights complaint pursuant to Fed.R.Civ.P. 12(b) (6) for failure to state a claim.

The Association filed an action under 42 U.S.C. Section 1983, alleging that N.Y. Fin. Law Section 123(b) (1), which allows taxpayers to sue state officials for equitable or declaratory relief for alleged misappropriations of state funds, was unconstitutional insofar as it contained an exception: taxpayers cannot sue to challenge a bond or note issue. The Association argued that the exception violated their federal "privileges and immunities," under the federal Constitution, and violated Article I, Section 9 of the New York State Constitution insofar as it abridged their right to "petition the government." The Association sought a declaration that the exception was unconstitutional, and a permanent injunction barring the New York State courts from enforcing it.

The defendants did not answer the complaint, but rather moved to dismiss. In reply, the Association moved for summary judgment. On April 11, 1996, the district court denied the Association's motion, and granted the defendant's motion from the bench, "for the reasons stated in the record." An order was entered on April 30, 1996, and final judgment was entered on May 3, 1996. The Association filed timely notice of appeal.

On appeal, the Association argues, inter alia, that 1) Chief Judge Kaye is "personally involved" in the acts complained of, because she wrote or concurred in two decisions adverse to Schulz, apparently relying on N.Y. State Fin. Law Section 123.b(1), see Schulz v. State, 81 N.Y.2d 336 (1993); Schulz v. State, 84 N.Y.2d 231 (1994); 2) judicial immunity does not protect judges from claims for injunctive relief, just as legislative immunity does not protect legislators from claims for declaratory relief; 3) the bond exception in Section 123.b(1) violates their "First Amendment

right to petition the government for redress of grievances and the right of access to the courts"; 4) Section 123.b(1) is violative of the privileges and immunities clause of the Fourteenth Amendment; 5) Section 123.b(1) is violative of the "republican form of government" clause of Article IV of the United States Constitution.

To begin, the claims against the New York Courts and the New York state legislature were properly dismissed on the ground of immunity. Section 1983 does not overrule the broad immunity afforded to states and their agencies by the Eleventh Amendment. Pennhurst State School & Hospital v. Halderman, 486 U.S. 89, 99 (1983); Dube v. State Univ. Of New York, 900 F.2d 587 (2d Cir. 1990); see also Alabama v. Puch, 438 U.S. 7981 (1983).

The claims against Speaker Silver and Majority Leader Bruno were also properly dismissed. Legislators generally enjoy absolute immunity from Section 1983 liability for official conduct "within the sphere of legitimate legislative authority." Tenny v. Brandhove, 341 U.S. 367, 376 (1951); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 731-32 (1980). The immunity extends to claims for declaratory or equitable relief, as well as for monetary relief. Consumers Union, 446 U.S. at 733 (citing Eastland v. United States Serviceman's Fund, 421 U.S. 491, 503 (1975). Even if these two legislators were involved in the enactment of Section 123.b(1), this activity would fall directly within the sphere of legitimate legislative authority.

Although Chief Judge Kaye is not absolutely immune from claims for prospective injunctive relief, Pulliam v. Allen, 446 U.S. 522, 541-42 (1984); Mireles v. Waco, 502 U.S. 9, 10 n.1 (1991), the Association's Section 1983 claim against her fails. Section 123.b(1) is a state statute that affirmatively confers taxpayer standing in the state courts. Under federal law, however, taxpayer standing does not exist, see

Commonwealth of Massachusetts v. Mellon, 262 U.S. 447 (1923), except for certain cases where a taxpayer alleges that the federal government has violated the Establishment Clause. Flast v. Cohen, 392 U.S. 83 (1968); see also Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 219-21, 227-28 (1974) (discussing citizen and taxpayer standing).

If under federal law, a taxpayer suit creates no justiciable "case or controversy" under Article III of the Constitution, the Association cannot assert a federal constitutional right to broad taxpayer standing simply by virtue of the fact that New York State, by statute, has gone beyond the federal Constitution and authorized such suits. See Board of Education of the Mt. Sinai Union Free School District v. New York State Teachers Retirement System, 60 F.3d 106, 110 (2d Cir. 1995). Because there is no federal right to taxpayer standing, this Section 1983 action fails. See Bryant v. Maffucci, 923 F.2d 9979, 982 (2d Cir. 1991) (Section 1983 plaintiff must show, inter alia, that she was denied a "federal right").

Additionally, the Association has not alleged a concrete injury of a kind that would otherwise suffice to confer federal standing. See, e.g., Board of Education of the Mt. Sinai Union Free School District, 60 F.3d 106. In federal court, state taxpayers generally do not have standing by virtue of their status, and may only challenge a state's action in a "'good faith pocketbook action' in which the taxpayer alleges a 'direct and particular financial interest.'" Id. (quoting Doremus v. Board of Education of Hawthorne, 342 U.S. 429, 434-35 (1952)). The Association members have not specified how they will be harmed if denied taxpayer standing in the future, or indeed any other concrete injury.

We have considered all of plaintiffs-appellants' remaining contentions on this appeal and have found them to

be without merit. The judgment of the district court is AFFIRMED.

ELLSWORTH A. VAN GRAAFEILAND,
U.S.C.J.

DENNIS JACOBS, U.S.C.J.

GUIDO CALABRESI, U.S.C.J.

Appendix C

Bench Decision and Order of the United States District Court for the Northern District of New York, April 11, 1996

Robert Schulz et al. v New York State Unified Court System et al. 96-CV-373

Introduction

This is an action under 42 U.S.C. Section 1983 alleging violations of plaintiffs' rights under various provisions of the United States Constitution including the First Amendment, the Privileges and Immunities Clause and the Guarantee Clause. Plaintiffs also assert pendant state claims under the New York State Constitution. Plaintiffs seek a declaratory judgment declaring New York State Finance Law Section 123-b(1) unconstitutional, and a permanent injunction enjoining the New York State Unified Court System from enforcing that provision.

The plaintiffs in this action are taxpayers and citizens of New York State. The defendants are the New York State Unified Court System, the New York State Legislature, Judith Kaye, Chief Judge of the New York Court of Appeals, Joseph Bruno, Majority Leader of the New York State Senate, and Sheldon Silver, Speaker of the New York State Assembly. The statutory provision at issue here, New York State Finance Law Section 123-b(1), grants New York State citizen taxpayers standing to challenge state fiscal practices in the New York State courts.

However, Section 123-b(1) also explicitly denies citizen taxpayer standing to challenge state or local government bonding practices. Specifically, the provision

denies citizen taxpayer standing to challenge "the authorization, sale, execution or delivery of a bond issue or notes issued in anticipation thereof by the state or any agency, instrumentality or subdivision thereof or by any public corporation or public benefit corporation." New York Finance Law Section 123-b(1).

Procedural History

Plaintiffs filed their verified complaint on March 1, 1996. They immediately sought an Order to Show Cause why a declaratory judgment and permanent injunction should not issue. However, this Court denied plaintiffs' application.

Presently before the Court are (1) defendants' motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim pursuant to Rules 12(b) (1) and 12(b) (6) of the Federal Rules of Civil Procedure, and (2) Plaintiffs' cross-motion for summary judgment.

Discussion

When evaluating a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the Court must "accept as true all the factual allegations in the complaint" and draw all reasonable inferences in favor of the plaintiff. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 113 S.Ct. 1160, 1161 (1993); Walker v City of New York, 974 F.2d 293, 298 (2d Cir. 1992). The Court must also read the complaint in a light most favorable to the non-movant. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974).

In other words, the Court will not dismiss plaintiffs' complaint for failure to state a claim "'unless it appears beyond doubt that the plaintiff[s] can prove no set of facts in support of

[their] claim[s] which would entitle [them] to relief.'" Ricciuti v. New York City Transit Auth., 941 F.2d 119, 123 (2d Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

These principles apply with even greater force where, as in this case, a plaintiff is proceeding pro se, and alleging violations of their civil rights. Easton v. Sundram, 947 F.2d 1011, 1015 (2d Cir. 1991), cert. Denied, 112 S.Ct. 1943 (1992).

I. Section 1983 Claims

A. Defendants Not "Persons" Under Section 1983

In this case, plaintiffs assert Section 1983 claims against two state institutions (the New York State Unified Court System and the New York State Legislature) and three individual defendants in their official capacities (Judith Kaye as Chief Judge of the Unified Court System, Joseph Bruno as Majority Leader of the New York State Senate, and Sheldon Silver as Speaker of the New York Assembly).

However, the Supreme Court of the United States has held that "neither a State nor its officials are 'persons' under Section 1983." Will v. Michigan Dept of State Police, 491 U.S. 58, 71 (1989). This principle also precludes Section 1983 claims against state agencies. Komolosi v. New York State Officer of Mental Health and Developmental Disabilities, 64 F.3d 810, 815 (2d Cir. 1995).

Thus, the defendants just named are not "persons" within the meaning of Section 1983 and plaintiffs' claims against these defendants must be dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

B. No Personal Involvement

Even if the Court were to read plaintiffs' complaint to assert Section 1983 claims against Chief Judge Kaye, Mr. Bruno and Mr. Silver in their individual capacities, these claims cannot stand.

In order to maintain a Section 1983 action against a defendant in his or her individual capacity, a plaintiff must allege facts demonstrating that the defendant was personally involved in the plaintiff's alleged constitutional deprivations. Colon v. Coughlin, 58 F3d 865, 873 (2d Cir. 1995).

Here, plaintiffs fail to allege any facts demonstrating that these three defendants were personally involved in plaintiffs' alleged constitutional deprivations. Therefore, these claims must also be dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure.

C. Judicial and Legislative Immunity

Moreover, it is well established that judges are absolutely immune from suit for actions taken within their judicial capacity, Mireless v. Waco, 112 S.Ct. 286, 287 (1991); see also Young v. Selsky, 41 F.3d 47 (2d Cir. 1994), and state legislators are immune from suit for actions taken in the discharge of their legislative duties. Spallone v. United States, 493 U.S. 265,278 (1990).

Plaintiffs' claims against Ms. Kaye, Mr. Bruno and Mr. Silver arise out of actions taken within their judicial or legislative capacities. Thus, the doctrines of judicial and legislative immunity bar plaintiffs' claims against these defendants and plaintiffs' claims must be dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure.

II. Plaintiffs' State Law Claims

Finally, while this Court retains some discretion to entertain state law claims once all federal claims have been dismissed, 28 U.S.C. Section 1367, "where the federal claims are dismissed before trial. . . the state claims should be dismissed as well." Maric v. St. Agnes Hosp. Corp., et al., 65 F.3d 310, 314 (1995) (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)). Thus, plaintiffs' claims under the New York State Constitution must also be dismissed.

Conclusion

Therefore after carefully considering the papers submitted by the parties in connection with this matter, it is hereby

ORDERED that defendants' motion to dismiss the complaint is GRANTED, plaintiffs cross-motion for summary judgment is DENIED, and the Complaint is DISMISSED in its entirety.

Appendix D

Provisions of the New York Constitution That Are Indirectly Involved in This Case. They Are Among Those Debt-Controlling Provisions That Are Eviscerated by the Statute Under Challenge in This Case.

1. Article VII, Section 11 of the New York Constitution reads in relevant part: ***"no debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be authorized by law, for some single work or purpose, to be distinctly specified therein. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election...."***

2. Article X, Section 5 of the New York Constitution reads in relevant part: ***"Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created...."***

3. Article VII, Section 8 of the New York Constitution reads in relevant part: ***"nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking...."***

4. Article VIII, Section 4 of the New York Constitution reads in relevant part: ***"...no county, city, town, village or school district described in this section shall be allowed to contract indebtedness for any purpose or in any manner which, including existing indebtedness, shall exceed an amount equal to the following...."***

5. Article VII, Section 12 of the New York Constitution reads in relevant part: ***"...all debts contracted by the State and each portion of any such debt from time to time so contracted shall be subject to the following rules...5. No such debt shall be contracted for a period longer than that of the probable useful life of the work or purpose for which the debt is to be contracted...."***

6. Article VIII, Section 1 of the New York Constitution reads in relevant part: ***"nor shall any county, city, town village or school district give or loan its credit to or in aid of any individual, or public or private corporation of association, or private undertaking...."***

7. Article VIII, Section 2 of the New York Constitution reads in relevant part: ***"No county, city, town, village or school district shall contract any indebtedness except for county, city, town, village or school district purposes...."***